

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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Court Minutes

May 19, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Blease, Associate Justice; Nicholson, Associate Justice; and Harper, bailiff.

C054011 THE PEOPLE v. O'BRIEN

Cause called. David A. Nickerson argued and Harris B. Taback appeared only for appellant. Catherine G. Tennant, Deputy Attorney General, argued for respondent. Cause submitted.

Consolidated with:

C054462 THE PEOPLE v. DICKSON

Cause called. Johnny L. Griffin III argued for appellant. Catherine G. Tennant, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:13 a.m., the court recessed. At 10:19 a.m., the court reconvened with Davis, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

C054350 THE PEOPLE v. TALAMANTES et al.

Cause called. Gregory Marshall, court appointed counsel, argued for appellant Talamantes. Peggy A. Headley, court appointed counsel, argued for appellant Ambriz. David A. Rhodes, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:49 a.m., the court recessed. At 10:54 a.m., the court reconvened.

C054853 THE PEOPLE v. ZANINI

Cause called. Joseph Shipp, court appointed counsel, argued for appellant. Tia M. Coronado, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:20 a.m., the court recessed. At 11:27 a.m., the court reconvened with Morrison, Associate Justice; Robie, Associate Justice; and Butz, Associate Justice.

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C056320 THE PEOPLE v. MASOTTI

Cause called. George M. Hendrickson, Deputy Attorney General, argued for appellant. John Staley, court appointed counsel, argued for respondent. Cause submitted.

At 11:41 a.m., the court recessed. At 2:02 p.m., the court reconvened with Scotland, Presiding Justice; Sims, Associate Justice; and Raye, Associate Justice.

C055900 THE PEOPLE v. ACCREDITED SURETY AND CASUALTY CO. INC.

Cause called. F.L. Willis, Jr. argued for appellant. Brad J. Stephens, Deputy County Counsel, argued for respondent. Cause submitted.

At 2:20 p.m., the court recessed. At 2:27 p.m., the court reconvened with Nicholson, Associate Justice; Raye, Associate Justice; and Butz, Associate Justice.

C054917 TULL et al. v. YUBA COUNTY et al.; A TEICHERT & SON, INC.

Cause called. Keith G. Wagner argued for appellants. Jesse J. Yang argued for respondent A. Teichert & Sons. John M. Taylor appeared only for respondent. Cause submitted.

At 2:56 p.m., the court recessed. At 3:04 p.m., the court reconvened with Sims, Associated Justice; Robie, Associate Justice; and Butz, Associate Justice.

C054387 SAN JOAQUIN COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES v. WINN

Cause called. Bruce P. Zelis argued for appellant. Sharon Quinn, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:27 p.m., the court recessed. At 3:34 p.m., the court reconvened with Nicholson, Associated Justice; Robie, Associate Justice; and Butz, Associate Justice.

C056234 FOX, as Trustee, etc. v. HUGHES

Cause called. William P. Roscoe III, argued for appellant. Elizabeth A. Ikemire argued for respondent. Cause submitted.

At 3:28 p.m., the court recessed until Tuesday, May 20, 2008, at 9:30 am.

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May 19, 2008 continued

- C055353 THE PEOPLE v. KING, JR. (Not For Publication)**
The matter is remanded with directions to the trial court to articulate the statutory bases of all penalty assessments imposed and amend the order of probation to include them. In all other respects, the judgment is affirmed.
SCOTLAND, P.J.
We Concur: Blease, J.
 Hull, J.
- C055490 THE PEOPLE v. WISE (Not For Publication)**
The judgment is affirmed.
HULL, J.
We Concur: Davis, Acting P.J.
 Nicholson, J.
- C055915 THE PEOPLE v. JACKSON (Not For Publication)**
The judgment is modified to strike the fine imposed pursuant to Penal Code section 1203.097. The cause is remanded with directions to the trial court to identify what portion of the \$650 amount imposed as fine and penalty assessment is fine, and which part is penalty assessment. The judgment is affirmed as modified. The trial court is directed to prepare an amended abstract reflecting the modifications and corrections ordered by this court and to forward a certified copy of the abstract to the Department of Corrections and Rehabilitation.
BLEASE, Acting P.J.
We Concur: Davis, J.
 Morrison, J.
- C056109 THE PEOPLE v. HAENGGI (Not For Publication)**
C056827
The judgment is affirmed. The trial court is directed to (1) correct the abstract of judgment by deleting reference to the firearm enhancement on count three and setting forth the applicable penalty assessments, and (2) forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.
SCOTLAND, P.J.
We Concur: Nicholson, J.
 Cantil-Sakauye, J.
- C056218 THE PEOPLE v. JOHNSON (Not For Publication)**
The judgment is affirmed.
SCOTLAND, P.J.
We Concur: Davis, J.
 Hull, J.

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**C054294 ADAIR et al. v. STOCKTON UNIFIED (Certified For Publication)
SCHOOL DISTRICT et al.**

The judgment is affirmed. The Teachers' request for judicial notice is dismissed as moot. The Teachers shall recover costs on appeal. ...

(CERTIFIED FOR PUBLICATION INCLUDING APPENDIX.)

BUTZ, J.

We Concur: Sims, Acting P.J.

Raye, J.

**C054465 THE PEOPLE v. WIGGINS
BY THE COURT:**

Appellant's petition for rehearing is denied.

SCOTLAND, P.J.

May 20, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Davis, Associate Justice; Nicholson, Associate Justice; Hull, Associate Justice; and Harper, bailiff.

**C055665 In re AMY T. et al.; SISKIYOU COUNTY HUMAN SERVICES DEPARTMENT v.
MARILYN T.**

Cause called. Marilyn Trevino argued for appellant in pro per. Dennis M. Tanabe, Deputy County Counsel, argued for respondent. Cause submitted.

At 9:49 a.m., the court recessed. At 9:49 a.m., the court reconvened.

**C056040 In re MICHAEL C.; AMADOR COUNTY HEALTH AND HUMAN SERVICES
AGENCY v. MARY C.**

Cause called. Mary Crago argued for appellant in pro per. Jennifer K. Magee, Deputy County Counsel, argued for respondent. Cause submitted.

At 10:05 a.m., the court recessed. 10:10 At a.m., the court reconvened with Davis, Associated Justice; Hull, Associate Justice; and Cantil-Sakauye, Associate Justice.

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May 20, 2008 continued

C055459 ROMMELL v. BEAR VALLEY SKI COMPANY et al.

Cause called. Ed Williams argued for appellant. Timothy M. Smith argued for respondents Mountain Adventure Seminars et al. Brian T. Clark argued for respondents Bear Valley Ski Company. Cause submitted.

At 10:27 a.m., the court recessed. At 10:27 a.m., the court reconvened.

C055471 LANGE v. SCHILLING et al.

Cause called. Cory B. Chartrand argued for appellants. Charles A. Koss argued for respondent. Cause submitted.

At 10:49 a.m., the court recessed. At 2:01 p.m., the court reconvened with Sims, Associated Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

C055224 SUNSET SKYRANCH PILOTS ASSOC. et al. v. COUNTY OF SACRAMENTO et al.; JOHN M. TAYLOR et al.

Cause called. Lanny T. Winberry argued for appellant. Krista C. Whitman, Deputy County Counsel, argued for respondents County of Sacramento et al. John M. Taylor argued for respondents John M. Taylor et al. Cause submitted.

At 2:37 p.m., the court recessed. At 2:42 p.m., the court reconvened with Nicholson, Associated Justice; Butz, Associate Justice; and Cantil-Sakauye, Associate Justice.

C056812 TRACY PRESS, INC. v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY; CITY OF TRACY

Cause called. Charity Kenyon argued for petitioner. Bill Sartor argued and Daniel G. Sodergren appeared only for real party in interest. Cause submitted.

At 3:12 p.m., the court recessed. At 3:18 p.m., the court reconvened with Sims, Associated Justice; Morrison, Associate Justice; and Butz, Associate Justice.

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May 20, 2008 continued

C055406 HUDSON v. FIRE INSURANCE EXCHANGE

Cause called. David W. Baumgarten argued for appellant. Christopher S. Maile argued for respondent. Cause submitted.

At 3:47 p.m., the court recessed. At 3:51 p.m., the court reconvened with Hull, Associated Justice; Butz, Associate Justice; and Cantil-Sakauye, Associate Justice.

C053289 LIBERTY MUTUAL FIRE INSURANCE COMPANY v. LcL ADMINISTRATORS, INC.

Cause called. Ted W. Pelletier argued for appellant. Ronald L. Richman argued for respondent. Cause submitted.

At 4:15 p.m., the court recessed until Wednesday, May 21, 2008, at 9:30 a.m.

C055739 THE PEOPLE v. TOVAR (Not For Publication)

Special condition No. 5 is modified to require that defendant "Totally refrain from the use or possession of any alcoholic beverages and not knowingly enter any place of business or location where alcohol is the primary item for sale or use." Special condition No. 38 is modified to require that defendant "Refrain from residing in a living environment that you know has not been approved by your probation officer as a clean and sober living environment." ... As so modified, the judgment (order of probation) is affirmed.

DAVIS, J.

We Concur: Blease, Acting P.J.

Butz, J.

C055822 THE PEOPLE v. ATKISON (Not For Publication)

The judgment is affirmed.

DAVIS, Acting P.J.

We Concur: Hull, J.

Cantil-Sakauye, J.

C056277 THE PEOPLE v. ROBINSON (Not For Publication)

The judgment is affirmed.

DAVIS, J.

We Concur: Scotland, P.J.

Cantil-Sakauye, J.

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At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Sims, Associate Justice; Robie, Associate Justice; and Harper, bailiff.

C056127 WILLMS v. WESTLAKE

Cause called. David F. Brown argued for appellant. Don J. Pool argued for respondent. Cause submitted.

At 9:55 a.m., the court recessed. At 10:00 a.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Morrison, Associate Justice.

C056134 In re MICHAEL M.; PLUMAS COUNTY DEPARTMENT OF SOCIAL SERVICES AND PUBLIC GUARDIAN v. AARON M.

Cause called. Linda J. Conrad, court appointed counsel, argued for appellant. Janet G. Sherwood argued for respondent. Cause submitted.

At 10:22 a.m., the court recessed. At 10:26 a.m., the court reconvened with Blease, Associate Justice; Morrison, Associate Justice; and Hull, Associate Justice.

C056090 PETROVICH et al. v. RALEY'S, INC.

Cause called. Jonathan M. Wong argued for appellants. Joanna R. Mendoza argued for respondent. Cause submitted.

At 10:34 a.m., the court recessed. At 10:39 a.m., the court reconvened with Blease, Associate Justice; Davis, Associate Justice; and Morrison, Associate Justice.

C054768 SMITH v. SEARS, ROEBUCK and CO.

Cause called. Sean M. Novak argued for appellant. Todd K. Boyer argued for respondent. Cause submitted.

At 10:57 a.m., the court recessed. At 11:01 a.m., the court reconvened with Davis, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

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May 21, 2008 continued

C054975 NATIONWIDE ASSET SERVICES INC. et al. v. DuFAUCHARD

Cause called. Jay-Allen Eisen argued for appellants. Joan E. Kerst argued for respondent. Cause submitted.

At 11:31 a.m., the court recessed until Friday, May 23, 2008, at 9:30 a.m.

C053800 THE PEOPLE v. LOGAN (Not For Publication)

The judgment is affirmed.

MORRISON, J.

I Concur: Blease, Acting P.J.

I Concur in the result:

Robie, J.

C053825 THE PEOPLE v. SAVIDGE (Not For Publication)

The judgment is affirmed. The case is remanded to the trial court for the limited purpose of recalculating the actual time defendant served on his sentence prior to modification of that sentence on September 28, 2006. The trial court shall prepare an amended abstract of judgment reflecting defendant's true custody credits and shall forward a copy of the amended abstract to the Department of Corrections and Rehabilitation.

NICHOLSON, J.

We Concur: Davis, Acting P.J.

Hull, J.

C053984 THE PEOPLE v. ESTEP (Not For Publication)

The judgment is affirmed.

MORRISON, J.

We Concur: Davis, Acting P.J.

Hull, J.

C055081 THE PEOPLE v. HAMMOND (Not For Publication)

Defendant's sentence is reversed and the case is remanded to the trial court with directions to resentence defendant in accordance with Cunningham, Black II, and Sandoval. In all respects, the judgment is affirmed.

NICHOLSON, J.

We Concur: Davis, Acting P.J.

Cantil-Sakauye, J.

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- C055384 THE PEOPLE v. GRIFFIN (Not For Publication)**
The judgment is affirmed.
NICHOLSON, J.
We Concur: Davis, Acting P.J.
Hull, J.
- C056843 THE PEOPLE v. LISLE (Not For Publication)**
The trial court judgment is affirmed.
MORRISON, J.
We Concur: Raye, Acting P.J.
Butz, J.
- C056848 THE PEOPLE v. GRIFFIN (Not For Publication)**
The conviction for simple assault in count II is reversed and dismissed.
As modified, the judgment is affirmed.
MORRISON, J.
We Concur: Blease, Acting P.J.
Cantil-Sakauye, J.
- C057442 THE PEOPLE v. HANCOCK (Not For Publication)**
The trial court judgment is affirmed.
RAYE, J.
We Concur: Nicholson, Acting P.J.
Robie, J.
- C057911 THE PEOPLE v. YONAI (Not For Publication)**
The trial court is ordered to correct item 1. of the abstract of judgment to reflect defendant's conviction for violation of section 4501.5. As modified, the judgment is affirmed.
BUTZ, J.
We Concur: Morrison, Acting P.J.
Cantil-Sakauye, J.
- C054389 SHANNON v. MARSHALL (Not For Publication)**
The judgment is reversed. The trial court is ordered to stay the proceedings during the period in which Shannon timely and diligently is pursuing his postconviction remedies. Shannon shall recover his costs on appeal pursuant to California Rules of Court, rule 8.278 (a) (1).
MORRISON, J.
We Concur: Blease, Acting P.J.
Butz, J.

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May 21, 2008 continued

- C054004 In re ALI A.; THE PEOPLE v. ALI A. (Not For Publication)**
The challenged conditions of probation are modified as follows:
“Not own or have any dangerous or deadly weapons in his possession or remain in any building or vehicle where the probationer knows that any person unlawfully has such a weapon, or to remain in the presence of any person whom the probationer knows to be unlawfully armed.”
“Not associate with person you know or whom the Probation Officer informs you are users or sellers of illegal drugs, including marijuana, or be in places where you know such substances are present.”
In all other respects, the judgment is affirmed.
MORRISON, J.
We Concur: Blease, Acting P.J.
 Robie, J.
- C055546 In re CRYSTAL M.; SACRAMENTO (Not For Publication)**
COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES v. CYNTHIA M.
The juvenile court’s order is affirmed.
MORRISON, J.
We Concur: Scotland, P.J.
 Sims, J.
- C056634 In re L.P. et al.; SACRAMENTO (Not For Publication)**
COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES v. G.M.
The orders of the juvenile court are affirmed.
NICHOLSON, J.
We Concur: Davis, Acting P.J.
 Hull, J.
- C057323 In re B.C. et al.; TRINITY COUNTY (Not For Publication)**
HEALTH AND HUMAN SERVICES v.
T.C.
The orders terminating parental rights are affirmed.
NICHOLSON, J.
We Concur: Scotland, P.J.
 Cantil-Sakauye, J.

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Court Minutes

May 21, 2008 continued

C053511 THE PEOPLE v. VILLA

BY THE COURT:

Appellant's petition for rehearing is denied.

DAVIS, Acting P.J.

**C056550 In re WALTER P.; THE PEOPLE (Certified For Publication)
v. WALTER P.**

THE COURT:

The opinion in the above-entitled matter filed on April 5, 2008, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports and it is so ordered.

BLEASE, Acting P.J.

Davis, J.

Morrison, J.

**C056998 In re R.G. et al.; SAN JOAQUIN COUNTY (Not For Publication)
HUMAN SERVICES AGENCY v. NICOLE K.**

**C057469 In re R.G. et al.; SAN JOAQUIN COUNTY
HUMAN SERVICES AGENCY v. NICOLE K. et al.**

THE COURT:

It is ordered that the opinion filed herein on May 16, 2008, be modified as follows:

On page 2, the last sentence of the second paragraph stating, "Thus he has no appeal pending in this court" is deleted and replaced with the following sentence:

Thus, he is precluded from raising any claims based on the denial of the mother's request for modification.

There is no change in judgment.

DAVIS, Acting P.J.

Hull, J.

Robie, J.

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May 22, 2008

- C053632 THE PEOPLE v. GOLDE (Certified For Publication)**
The judgment is modified to vacate the sentence and the finding that “[d]efendant was sentenced pursuant to PC 667 (b) - (i) or PC 1170.12 (two-strikes).” The matter is remanded to the trial court which shall give the prosecution, as soon as the matter can be heard, an opportunity to establish a factual basis for the strike allegation. If the prosecution successfully does so, the trial court shall reenter the judgment and prepare and distribute as appropriate a new abstract of judgment. If the prosecution does not establish a factual basis for the strike allegation, the trial court shall dismiss the allegation and resentence defendant. The judgment is otherwise affirmed.
SIMS, Acting P.J.
We Concur: Nicholson, J.
 Cantil-Sakauye, J.
- C055563 THE PEOPLE v. VITAL (Not For Publication)**
The judgment is affirmed.
ROBIE, J.
We Concur: Davis, Acting P.J.
 Hull, J.
- C057168 THE PEOPLE v. JONES (Not For Publication)**
The judgment is modified to impose a \$20 court security fee in case No. 07F3268. As so modified, the judgment is affirmed.
CANTIL-SAKAUYE, J.
We Concur: Scotland, P.J.
 Nicholson, J.
- C054971 DYER v. DEPARTMENT OF (Certified For Publication)**
MOTOR VEHICLES
The judgment is reversed and the cause is remanded to the trial court for further proceedings consistent with the views stated herein. The DMV shall recover its costs on appeal. ...
BUTZ, J.
We Concur: Raye, Acting P.J.
 Morrison, J.
- C057033 In re BRANDEN C.; SHASTA COUNTY (Not For Publication)**
DEPARTMENT OF SOCIAL SERVICES
MARC A.
The order of the juvenile court is affirmed.
BUTZ, J.
We Concur: Blease, Acting P.J.
 Hull, J.

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May 23, 2008

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Raye, Associate Justice; Cantil-Sakauye and Horner, bailiff.

C047365 THE PEOPLE v. ZHUK

Cause called. Victor S. Haltom argued for appellant. Susan J. Orton, Deputy Attorney General, argued for respondent. Cause submitted.

At 9:51 a.m., the court recessed. At 9:55 a.m., the court reconvened with Blease, Associated Justice; Raye, Associate Justice; and Robie, Associate Justice.

C053955 HIRSCHLER v. DEPARTMENT OF CORRECTIONS et al.

Cause called. Andrew Chang argued for appellant. J. Scott Smith argued and Cori R. Sarno appeared only for respondents. Cause submitted.

At 10:22 a.m., the court recessed. At 10:24 a.m., the court reconvened with Sims, Associated Justice; Raye, Associate Justice; and Robie, Associate Justice.

C055649 THE PEOPLE v. RIFFEY

Cause called. Susan K. Keiser, court appointed counsel, argued for appellant. Julie A. Hokans, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:55 a.m., the court recessed. At 2:01 p.m., the court reconvened with Blease, Associated Justice; Raye, Associate Justice; and Robie, Associate Justice.

C054915 BIAGINI v. BECKHAM et al.

Cause called. Patrick Henry Dwyer argued for appellant. King McPherson argued for respondents. Cause submitted.

At 2:34 p.m., the court recessed. At 2:38 p.m., the court reconvened with Davis, Associated Justice; Nicholson, Associate Justice; and Hull, Associate Justice.

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May 23, 2008 continued

C055482 GREENUP et al. v. GREENWOOD et al.

Cause called. Phillip A. Cooke argued for appellants. Lindsay A. Goulding argued for respondents. Cause submitted.

At 2:53 p.m., the court recessed. At 2:57 p.m., the court reconvened with Davis, Associated Justice; Morrison, Associate Justice; and Hull, Associate Justice.

C051930 BOWEN, etc., et al. v. RYAN

Cause called. Jay-Allen Eisen argued for appellant. Peter J. Johnson argued for respondents. Cause submitted.

At 3:35 p.m., the court recessed until Tuesday, May 27, 2008, at 9:30 a.m.

**C051717 THE PEOPLE v. GARCIA
C052173**

(Not For Publication)

The judgment is affirmed.
BLEASE, Acting P.J.
We Concur: Morrison, J.
Cantil-Sakauye, J.

C053189 THE PEOPLE v. LILBURN

(Not For Publication)

The restitution fine is ordered reduced from \$660 to \$200. The matter is remanded to the trial court, which may either strike the condition of probation No. 14 or modify that condition in accordance with the views expressed in this opinion. In all other respects, the judgment is affirmed.

CANTIL-SAKAUYE, J.
We Concur: Nicholson, Acting P.J.
Hull, J.

C055671 THE PEOPLE v. SANDOVAL

(Certified For Publication)

The judgment is reversed.
SIMS, Acting P.J.
We Concur: Nicholson, J.
Hull, J.

C055819 THE PEOPLE v. BAKER

(Not For Publication)

The judgment is affirmed.
SCOTLAND, P.J.
We Concur: Nicholson, J.
Cantil-Sakauye, J.

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Court Minutes

May 23, 2008 continued

- C056802 THE PEOPLE v. ROBERTSON (Not For Publication)**
The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment (1) properly reflecting the presentence custody credits, (2) specifying the component parts of the \$36 fine pursuant to Penal Code section 1202.5, and (3) correcting the Penal Code section associated with the 2002 sexual battery on a restrained person, and to forward the amended abstract to the Department of Corrections and Rehabilitation.
NICHOLSON, J.
We Concur: Sims, Acting P.J.
 Hull, J.
- C055715 In re ALVIN T.; THE PEOPLE v. (Not For Publication)**
ALVIN T.
The order dismissing the juvenile court petitions is reversed. The cause is remanded to the juvenile court with directions to enter a new order denying the minor's suppression motion and for further proceedings consistent with this opinion.
BUTZ, J.
We Concur: Hull, Acting P.J.
 Cantil-Sakauye, J.
- C056084 In re R.J. et al.; TEHAMA COUNTY (Not For Publication)**
DEPARTMENT OF SOCIAL SERVICES v. S.J.
The judgment (order denying S.J.'s request for de facto parent status) is affirmed.
NICHOLSON, J.
We Concur: Davis, Acting P.J.
 Hull, J.
- C053515 CARLSSON v. CARLSSON (Certified For Publication)**
THE COURT:
The opinion in the above entitled matter filed on May 8, 2008, was not certified for publication in the Official Reports for good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.
BY THE COURT:
Blease, Acting P.J.
Sims, J.
Butz, J.

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Court Minutes

May 23, 2008 continued

**C054718 AMERICAN BOARD OF COSMETIC (Certified For Publication)
SURGERY, INC. v. MEDICAL BOARD
OF CALIFORNIA et al.**

THE COURT:

The opinion of this court filed April 28, 2008, in the above entitled case is modified ...

As modified, the petition for rehearing is denied. This modification does not effect a change in the judgment.

BY THE COURT:

BLEASE, Acting P.J

Sims, J.

Hull, J.